

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case No: 7257/07

In the matter between:

THE CAPE BAR COUNCIL

Applicant

and

PETER JOHN FESTUS

Respondent

JUDGMENT: 25 APRIL 2008

VAN ZYL J:

[1] This is an application for an order striking the respondent's name from the roll of advocates on the ground that he is not a fit and proper person to continue practising as an advocate. Mr M Donen SC appears for the applicant, assisted by Ms S Seria and Ms N Mangu-Lockwood. The court expresses its appreciation for their able assistance in this matter. There is no appearance for the respondent, who filed a notice of opposition on 16 August 2007 but has failed to file any papers in response to the serious charges of professional misconduct made against him.

[2] The charges against the respondent are fourfold, namely two charges of taking instructions and accepting fees from clients without the intermediation of an attorney, one charge of misleading the court and one charge of attempting to induce (suborn) an attorney to commit perjury. The facts giving rise to these charges are set forth fully in the founding affidavit of Mr A Schippers SC, the chairperson of the applicant, and need not be repeated here. Inasmuch as the respondent has seen fit not to respond to the charges or the facts giving rise thereto, such charges and facts must be accepted as admitted.

[3] It appears to be common cause that the respondent was admitted as an advocate of the High Court of South Africa on 6 September 1990. He was, and still is, duly enrolled as such. Although he was a pupil member of the Cape Bar in 1999, he did not pass the Bar examination and opted to practise as an independent advocate from an address in Somerset West. As a practising advocate, however, he was nevertheless, at all relevant times, subject to the rules of professional ethics of the applicant and other constituent Bars of the General Council of the Bar of South Africa. See *De Freitas and Another v Society of Advocates of Natal and Another* 2001 (3) SA 750 (SCA) and *Rosemann v The General Council of the Bar of South Africa* 2004 (1) SA 568 (SCA).

[4] The respondent must have been well aware of these rules when doing pupillage at the Cape Bar. It is also evidenced by his attempts to exculpate himself when the charges were brought to his attention. There is not the slightest doubt that he has indeed acted unprofessionally and cannot be regarded as a fit and proper person to practise as an advocate of this court. In terms of section 7(1)(d) of the *Admission of Advocates Act* 74 of 1964, the court may suspend any person from practice, or order that the name of any person be struck off the roll, if it is satisfied that he or she is not a fit and proper person to practise as an advocate.

[5] In the present case it is clear that the professional misconduct of the respondent would not warrant mere suspension from practice for a period of time, particularly in view of his failure to place any explanation whatever for his professional misconduct before this court. I am satisfied that the only order justified in the circumstances of this matter is an order striking the name of the respondent from the roll of advocates.

[6] As for the costs of the application this is, in my view, undoubtedly a case in which the court should indicate its displeasure with the respondent's misconduct and the fact that he has not favoured the court with any response to the serious charges directed against him, by ordering him to pay the costs of this application on the scale as between attorney and client.

[7] In the event I would make the following order:

1. The name of the respondent is struck from the roll of advocates.
2. The respondent is ordered to pay the costs of the application on the scale as between attorney and client.



D H VAN ZYL

Judge of the High Court

I agree.

D V DLODLO

Judge of the High Court